IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8106 OF 2004

Solapur Municipal Corporation,
Solapur and Anr. .. Petitioners

Vs

Shri Tanojkumar Balram Chatterjee, .. Respondent

Mr.Nitin Jamdar, for the petitioners.

Mr Pankaj J.Das, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 11th October, 2004.

PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr Das, learned counsel, waives service for the respondent. By consent, rule is heard finally.

3. This petition is directed against the order dated 19.6.2004 passed by the learned Civil Judge, Sr.Dn., Solapur in Regular Civil Suit no.1177 of 2003, by which the application filed by the petitioner-Corporation for setting aside "No W.S." order, has been rejected. While rejecting the application, the trial Court has not recorded any reasons. The order reads thus :

"The defendant nos 1 and 2 failed to file W/S

within 90 days. The application for permission to file W/S in the record is rejected."

Admittedly, the delay in filing the written statement was hardly 16 days and it had been explained by the petitioner-Corporation in their application. The application was opposed on the ground that the reasons were absolutely false and not tenable in law. The learned Judge has failed to consider the Judgment of this Court in **Shailaja A.Sawant Vs. Sayajirao Ganpatrao Patil, 2004 (2) Mh.L.J.419** which has been affirmed by the Division Bench of this Court in **Chintaman Sukhdeo Kaklij and Ors Vs. Shivaji Bhausaheb Gadhe and ors in Writ Petition No.2847 of 2004 vide its Judgment dated 12/13th August,2004**, wherein this Court has taken a view that the provisions of Order 8 Rule 1 of CPC are directory in nature and in a given case the Court has powers to extend time beyond the period of 90 days to file written statement.

4. Considering the reasons stated in the application filed by the petitioner-Corporation and the overall facts and circumstances of the case, I do not find that the reasons stated in the application filed by the petitioners for setting aside "no W.S." order, are imaginary and false. They are, in my opinion,

sufficient to allow the application. Keeping that in view and considering that the delay was hardly of 16 days and considering the observations made by this Court in the aforestated cases, in my opinion, this petition deserves to be allowed.

5. In the result, the writ petition is allowed. The impugned order is quashed and set aside. The trial Court shall allow the petitioner-Corporation to place on record the written statement within one week from the date of receipt of this order and proceed to hear the suit on merits in accordance with law. The petitioners to communicate this roder to the Corut below within 10 days from today.

5. Rule is made absolute. No costs.

. An authenticated copy of this order may be made available to the parties.

(D.B.BHOSALE, J.)